# BEFORE THE FEDERAL ELECTION COMMISSION

Harry Sherr 10 Nathan Lord Amherst, NH 03031

Complainant,

v.

Swift Boat Veterans for Truth P.O. Box 26184 Alexandria, VA 22313;

Roy Hoffman 9030 Ivebridge Crossing Richmond, VA 23236;

John O'Neill 1004 Kirby Drive Houston, TX 77019;

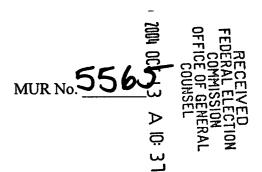
Weymouth Symmes 2401 Brooks Street PMB 338 Missoula, MT 59801; and

Alvin A. Horne 2115 Briarglen Dr Houston, TX 77027,

Respondents.

#### **COMPLAINT**

Complainant files this complaint against the Swift Boat Veterans For Truth; Roy
Hoffman, Chairman; John O'Neill, Co-Chairman; Weymouth Symmes, Treasurer; and Alvin
A. Horne, Secretary (collectively, "Respondents"), for violations of the electioneering
communication provisions of the Federal Election Campaign Act and Federal Election
Commission regulations, as described below.



The facts indicate that Respondents conspired to produce and air illegal corporate electioneering communications.

#### I. FACTS

Swift Boat Veterans for Truth ("SBVT") is organized under section 527 of the Internal Revenue Code. On April 30, 2004, SBVT filed Form 8871, "Notice of Section 527 Status," with the Internal Revenue Service. *See* Attachment A.

To date, SBVT has filed five notices of electioneering communications – FEC Form 9 – with the Federal Election Commission in the month of September 2004. On each one of these notices, under question six, SBVT has claimed to be a qualified nonprofit corporation under 11 C.F.R. § 114.10 (2004). See Attachment B.

#### II. LEGAL ARGUMENT

#### A. SBVT Has Made Electioneering Communications

An electioneering communication is defined as a "broadcast, cable, or satellite communication" that "refers to a clearly identified candidate for federal office," is made within "60 days before a general . . . election" and that "is targeted to the relevant electorate." 2 U.S.C. § 434(f)(3)(A)(i). The Commission's regulations further refines this definition; most importantly, the term "targeted to the relevant electorate" is defined as meaning that "the communication can be received by 50,000 or more persons" in the state the candidate seeks to represent, if a candidate is running for the United States Senate. 11 C.F.R. § 100.29(b)(5).

SBVT has reported millions of dollars' worth of disbursements for electioneering communications to the Commission on its Form 9 reports. There is no dispute that SBVT has engaged in electioneering communications on a massive and widespread scale.

#### B. SBVT is a Corporation

2 U.S.C. § 441b(a) forbids corporations from making "a contribution or expenditure in connection with any election at which . . . a Senator or Representative in . . . Congress are

to be voted for." The statute defines "contribution or expenditure" to include electioneering communications. See id. § 441b(b)(2); see also 11 C.F.R. § 114.2(b)(2)(iii) (prohibiting corporations from "[m]aking payments for an electioneering communication to those outside the restricted class"). It is a core violation of federal election law for corporations to make electioneering communications.

The only corporations that may make electioneering communications are qualified nonprofit corporations. See id. § 114.10(d)(2). SBVT has claimed qualified nonprofit corporation status on every one of its Form 9 submissions to the Commission. Thus, there can be no question that SBVT is a corporation. SBVT is therefore guilty of illegal corporate electioneering communications unless it meets the criteria for a qualified nonprofit corporation.

#### C. SBVT is Not a Qualified Nonprofit Corporation

A qualified nonprofit corporation must be "described in 26 U.S.C. 501(c)(4)." 11 C.F.R. § 114.10(c)(5). SBVT is not described in 26 U.S.C. § 501(c)(4).

First, SBVT has already filed with the Internal Revenue Service under section 527 of the Internal Revenue Code. SBVT cannot now claim that it is also organized under section 501(c)(4). These provisions are mutually exclusive; one corporate entity cannot organize under both sections simultaneously.

Second, SBVT is not "primarily" engaged in promoting the common good and general welfare of the people of the community. See 26 CFR § 1.501(c)(4)-1(a)(2)(i) (2004); see also Express Advocacy; Independent Expenditures; Corporate and Labor Organization Expenditures, 60 Fed. Reg. 35,292, 35,301 (July 6, 1995). In addition to the fact that SBVT has done nothing but air political ads since its creation in April 2004, its notification to the IRS of section 527 status means that it has admitted that it is "organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures, or both, for . . . the function of influencing or attempting to influence the

selection, nomination, election, or appointment of any individual to any Federal. State. or local rublic office or office in a political organization, or the election of Presidential or Vice-Presidential electors." 26 U.S.C. § 527(e)(1-2). Both the Commission's regulations and the Supreme Court have made clear that a entity organized primarily for the purpose of influencing elections cannot be a qualified nonprofit corporation. See FEC v. Mass. Citizens for Lifz, Inc., 479 U.S. 238 (1986).

#### III. REQUESTED ACTION

As we have shown, the respondents have violated the Federal Election Campaign Act.

Accordingly, we request that they be enjoined from further violations, be required to repay their illegal contributions and be fined the maximum amount permitted by law.

Sincerely,

SUBSCRIBED AND SWORN to before me this 7 day of Octobe

\_, 2004

Notary Public

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My Commission Expires:

# **ATTACHMENT A**

Form **8871** (Rev July 2003)

#### Political Organization Notice of Section 527 Status

OMB No 1545-1693

Department of the Treasury Internal Revenue Service

Part   General Information	
1 Name of organization	Employer identification number
Swift Boat Veterans for Truth	20 - 1041228
2 Mailing address (P O. box or number, street, and room o P O Box 26184	r suite number)
City or town, state, and ZIP code Alexandria, VA 22313	
3 Check applicable box: ∠ Initial notice An	nended notice Final notice
4a Date established	4b Date of material change
04/23/2004	04/23/2004
5 E-mail address of organization no@email	
6a Name of custodian of records	Custodian's address
Weymouth D Symmes	P O Box 26184
	Alexandria, VA 22313
7a Name of contact person	Contact person's address
Weymouth D Symmes	P O Box 26184
	Alexandria, VA 22313
8 Business address of organization (if different from mails P O Box 26184	ng address shown above). Number, street, and room or suite number
City or town, state, and ZIP code	
Alexandria, VA 22313	
9a Election authority	9b Election authority identification number
NONE	
Part II Notification of Claim of Exemption	From Filing Certain Forms (see instructions)
ioa is this organization claiming exemption from filing Formatic or local political organization? Yes No ⊻	m 8872, Political Organization Report of Contributions and Expenditures, as a qualified
0b If 'Yes,' list the state where the organization files report	ts:
1 Is this organization claiming exemption from filing For	m 990 (or 990-EZ), Return of Organization Exempt from Income Tax, as a caucus or
issociations of state or local officials? Yes No 🗹	
Part III Purpose	
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12 Describe the purpose of the organization

To engage in exempt function activity

Part IV List of All Relat	ed Entities (see instructions	s)
13 Check if the organization has no	related entities	🗹
14a Name of related entity	14b Relationship	14c Address
Part V List of All Office	ers, Directors, and Highly	Compensated Employees (see instructions)
15a Name	15b Title	15c Address
Weymouth D Symmes	Treasurer	P O Box 26184
		Alexandria, VA 22313
Alvin A Horne	Secretary	P O. Box 26184
		Alexandria, VA 22313
John O'Neill	Co-Chairman	P O Box 26184
		Alexandria, VA 22313
Admiral Roy Hoffman (Ret.)	Chairman	P O Box 26184
		Alexandna, VA 22313
Internal Revenue Code, and belief, it is true, co	, and that I have examined this notice,	od in Part I is to be treated as a tax-exempt organization described in section 527 of the including accompanying schedules and statements, and to the best of my knowledge at I am the official authorized to sign this report, and I am signing by entering my name
below. Weymouth D Sym	imes	04/30/2004
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Sign Name of author:	zed official	Date

# ATTACHMENT B

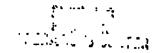
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# 24 HOUR NOTICE OF DISBURSEMENTS/OBLIGATIONS FOR ELECTIONEERING COMMUNICATIONS

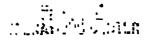
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